

RESPONSE TO COMMENTS

SUBJECT: Consideration of Adoption of Basin Plan Amendment To Incorporate Authorization For Schedules of Compliance In NPDES Permits

DISCUSSION

On February 10, 2004, the Regional Board conducted a public workshop to consider an amendment to the Basin Plan to incorporate language authorizing compliance schedules in NPDES permits, under certain circumstances. The amendment is fully described in the revised "Staff Report for the Proposed Amendment To The *Water Quality Control Plan For The North Coast Region* to Incorporate Authorization for Schedules of Compliance in NPDES Permits," dated March 2004.

The comments provided during and following the workshop, and received on or before March 9, 2004, are summarized below, together with Board staff's response. The Board directed staff to consider whether these comments warrant changes to the proposed Basin Plan amendment, and to schedule a public hearing at the earliest opportunity to consider adoption of an appropriately revised amendment. Staff has modified the proposed amendment to clarify the intent of the amendment. The modified text is shown in the attachment to Resolution No. R1-2004-0011. Staff did not revise the amendment language based on any of the comments received. The rationale for this is provided in the response to the comments below.

RESPONSE TO COMMENTS

Comment 1 – Craig Johns, representing the City of Santa Rosa, stated that it is necessary to allow municipal wastewater treatment facilities adequate time to comply with changing and the complicated nature of wastewater treatment. Mr. Johns discussed the substantial length of time required in planning and making the necessary changes in treatment facilities in order to comply with the regulations. Mr. Johns suggested two options for the Board to consider.

Option #1-The timeframe for compliance should be ten years without the 5-year review and application for extension.

Option #2- A permittee can apply for an extension of 5 years by providing the following information to the Executive Officer (EO): 1) the permittee demonstrates to the satisfaction of the EO that all conditions set forth below to document the need for and justify the duration of any such compliance schedule have been substantially met and sufficient progress toward achieving the standard has been documented; and; 2) any extension of the original date of compliance shall not exceed five years. up to a five year extension, but only where conditions of the compliance schedule have been fully met, and sufficient progress toward achieving the standard has been documented.
(City of Santa Rosa)

Response:

Staff agree that constructing facility upgrades can take a considerable amount of time. In regards to suggested Option #1, staff did consider allowing a ten-year time frame for compliance without the requirement to return for a renewal after 5 years. This option was rejected, as staff believes that it will be important for the Regional Water Board to consider the steps that are being taken by the permittee to come into compliance in the shortest time technically and economically feasible. In addition, it is problematic to incorporate compliance schedules into NPDES permits that extend beyond the permit expiration date. However, if it is apparent that full compliance may exceed the initial five-year period, staff support the incorporation of language into the permit findings that fully explain the steps necessary to achieve compliance and the predicted timeframe for implementation. This information can then be used by staff when renewing the permit after five years.

Option #2- Regional Water Board staff concurs with the application and review of permit extension milestones as proposed in this option. However, it appears that the comment would request that any extension to the five-year schedule be authorized by the Executive Officer. It is the intent of the Amendment that the schedule of compliance would be incorporated into NPDES permits. Any extension of time beyond the initial five-year period would be authorized in the renewed permit. The Regional Water Board cannot delegate NPDES permit renewals or amendments to the Executive Officer.

Comment 2

Gerald Gall, Superintendent of the City of Ukiah wastewater treatment plan, stated that the City of Ukiah supports the language in the Compliance Schedule. (City of Ukiah)

Response:

Staff notes support for the amendment for the record.

Comment 3

Concern was expressed that dischargers might expect an extension beyond the allotted timeframe. Suggestion made that the board exercise caution when considering extending the timeline related to a discharger's compliance schedule.

(Brenda Adelman, citizen)

Response:

Staff has carefully drafted the Amendment language so that it is clear that only one extension of five years (after the original five-year permit) may be granted to the permittee by the Board. In addition, this is only permissible in cases where "conditions of the compliance schedule have been fully met, and sufficient progress toward achieving the standard has been documented."

Comment 4 – Concern was stated that the permit is "just another tax and control mechanism to be used to confiscate water rights."

(Elsie Roberson, citizen)

Response:

Regional Water Board staff would like to clarify for the record, that there are no taxes associated with the subject amendment and it has no relationship with the water rights permitting process implemented by the State Water Resources Control Board.